

PT 98-62

Tax Type: PROPERTY TAX

Issue: Government Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

AMIEN'S VFW POST 1740, (OWNER))		
VILLAGE OF SOUTH WILLMINGTON,)		
(LESSEE))		
Applicant)		
v.)	Docket #	95-32-1
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)	Legal Description	See attached

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Scott M. Belt appeared on behalf of the Village of South Willmington.

Synopsis:

The hearing in this matter was held on April 8, 1997, at the James R. Thompson Center, 100 West Randolph Street, Chicago, Illinois, to determine whether or not the Grundy County property legally described on the sheet attached to the Notice of Decision in this matter qualified for exemption from real estate taxation for the 1995 assessment year.

Mr. Richard Alderson, village president of the Village of South Wilmington (hereinafter referred to as the "Village") was present and testified on behalf of the Village.

The issues in this matter include, first, whether Amien's VFW Post 1740 (hereinafter referred to as the "VFW") is a veteran's organization; secondly, whether the VFW owned this property during the 1995 assessment year; and lastly, whether this property was used for charitable, patriotic, and civic purposes or was leased or otherwise used with a view to profit

during the 1995 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the VFW is a veteran's organization. It is also determined that the VFW owned this property during the entire 1995 assessment year. Finally, it is determined that this property was not used for charitable as well as patriotic and civic purposes but was leased or otherwise used with a view to profit during the 1995 assessment year.

It is therefore recommended that the property legally described on the sheet attached to the Notice of Decision in this matter remain on the tax rolls and be assessed to the VFW, the owner thereof, for the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this property did not qualify for exemption for the 1995 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 5A.

2. On June 14, 1995, the Grundy County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the property here in issue. (Dept. Ex. No. 1)

3. On December 7, 1995, the Department advised the VFW that it was denying the exemption of this property because this property was not in exempt ownership and not in exempt use during 1995. (Dept. Ex. No. 2)

4. By a letter dated December 18, 1995, the attorney for the Village requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter conducted on April 8, 1997, was held pursuant to that request.

6. The VFW owned this property during the 1995 assessment year. (Appl. Ex. No. 7)

7. The Grundy County property legally described on the sheet attached to the Notice of Decision in this matter is commonly known as the VFW Park, located within the Village. (Tr. p. 12)

8. This property is improved with a ballpark, a pavilion, a small storage building, restrooms, and a granite memorial to the local citizens who lost their lives in foreign wars. (Tr. pp. 13, 14, & 16)

9. This property is entirely located within the village boundaries of the Village. (Tr. p. 19)

10. On March 8, 1995, the VFW, as lessor, and the Village, as lessee, entered into a lease agreement for an initial term of 20 years, beginning with the date of the execution of the lease for the property here in issue. (Appl. Ex. No. 4)

11. The lease granted to the Village an exclusive and irrevocable option to extend the lease for one additional 20 year period. (Appl. Ex. No. 4)

12. Pursuant to the terms of the lease, the Village is to pay to the VFW \$1,000.00 per year as rent during each year of the original term of the lease and also each year of the 20 option period. (Appl. Ex. No. 4)

13. The lease provides that two deeds shall be placed in escrow with the Mazon State Bank. One deed conveys the property here in issue from the VFW to the Village and the other deed conveys the property here in issue except for lots 6 and 7 in Block 11 from the VFW to the Village. The lease terms include an election by the VFW to retain said lots 6 and 7 in Block 11 at any time during the lease or extension, should the VFW decide to build a building thereon, to be occupied by the VFW. (Appl. Ex. No. 4)

14. The lease provides that if the Village stops using the property for public purposes, the property shall revert to the VFW. The lease also provides that if the VFW shall cease to exist, the appropriate deed in escrow shall be conveyed to the Village. (Appl. Ex. No. 4)

15. Beginning with the 1995 taxes, the lease provides that the taxes shall be paid by the Village. (Appl. Ex. No. 4)

16. The lease grants to the lessee, the Village, the right of quiet enjoyment of this property, except that the VFW shall have the right to enter the leased premises to maintain its granite memorial or to replace it, should it be damaged or destroyed. (Appl. Ex. No. 4)

17. At the end of the 20 year lease term and the 20 year irrevocable extension, the lease provides that the appropriate deed in escrow conveying the property to the Village be delivered to the Village by the Mazon State Bank. (Appl. Ex. No. 4)

18. During the period of time when the VFW and the Village were discussing the form of this lease agreement, the Village suggested that it be a contract for deed. The VFW refused that suggestion and insisted on a lease. The VFW did not explain to the Village its reason for taking this position. (Tr. pp. 27 &28)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

35 ILCS 200/15-145 exempts certain property from taxation as follows:

All Property of veterans' organizations used exclusively for charitable, patriotic and civic

purposes is exempt.

In the case of North Shore Post No. 21 vs. Korzen, 38 Ill.2d 231 (1967), the Illinois Supreme Court held that Paragraph 500.18b of the Revenue Act of 1939 was constitutional. The Court then went on to hold that Paragraph 500.18b of the Revenue Act of 1939, which is identical to 35 ILCS 200/15-145, requires that a veterans' organization must use its property exclusively for purposes which are charitable as well as purposes which are also civic and patriotic. At page 234, the Court stated this proposition as follows:

Therefore, in order for property of veterans' organizations to be exempted from taxation it must be shown not only that the property was used exclusively for charitable purposes but also that such use was patriotic and civic. (Emphasis supplied)

The Illinois Courts have consistently stated the general principle that the use of property to produce income is not a charitable or an exempt use, even though the net income is used for charitable or exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934). Consequently, since this property is leased for profit, it is not used for charitable or exempt purposes.

35 ILCS 200/15-60 exempts certain property from taxation in part as follows:

Also exempt are:

(c) all property owned by any city or village located within its corporate limits. (Emphasis supplied)

In the case of The Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983), the Appellate Court considered a case where the First Presbyterian Church of Oak Park owned two adjoining parcels of land which it used as a parking lot on Sundays from 9 A.M. to 10 P.M.

and which it leased during the rest of the week to the Village of Oak Park, for profit. In that case, the village relied on the decision in Children's Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972), and alleged that the church parking lot should be exempt since it was leased by a religious organization to the village. In rejecting that argument, the Appellate Court stated as follows:

The section 19.7 (charitable) exemption, like that in section 19.2 for religious institutions, turns on the primary use of the property. Unlike those provisions, the exemption provided for municipalities turns solely on ownership of the property.

The Appellate Court then went on to hold that to broaden the municipality exemption to include property only used for municipal purposes and not owned by a municipality, would add a new exemption to paragraph 19.6 (the municipality exemption under the Revenue Act of 1939) which the Court refused to do. The cause before me is very similar to the Village of Oak Park case, in that here the Village is seeking an exemption pursuant to 35 ILCS 200/15-60 which is the municipality exemption found in the Property Tax Code. Section 200/15-60 of the Property Tax Code, like paragraph 19.6 of the Revenue Act of 1939, requires ownership by the municipality. As in the Village of Oak Park case in this case the lessee Village is not the owner of the property and therefore does not qualify for exemption pursuant to the municipal exemption.

I therefore conclude that the VFW is a veteran's organization. I also conclude that the VFW owned this property during the 1995 assessment year. For the property of a veterans' organization to qualify for exemption, it must be used for charitable purposes which are also patriotic and civic. In this case, this property was not being used for charitable purposes, but rather was leased for profit for \$1,000.00 per year to the Village.

I also conclude that the VFW was the owner/lessor of this property, and the Village was the lessee. 35 ILCS 200/15-60 requires that village property, located within the village boundaries, be owned by the village to be exempt. That is not the case here.

I therefore recommend that the property legally described on the sheet attached to the Notice of Decision in this matter remain on the tax rolls and be assessed to the Amien's VFW

Post 1740, the owner thereof, for the 1995 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 14, 1998